IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JAIPUR BENCH, JAIPUR

S. B. CIVIL MISC. APPEAL NO. 469/06

Kajod Mal vs. Maliram & Ors.

Date of Judgment: 13th March, 2007

Hon'ble Mr. Justice R. S. Chauhan

Mr. Mahendra Goyal for the Appellant
Mr. Virendra Yadav for the Respondent No. 1.

(Per Court):

This appeal arises out of the Order dated 19-1-2006 passed by Additional District Judge, Shahpura whereby the learned Judge has dismissed the application for temporary injunction filed by the appellant-plaintiff.

In brief the facts of the case are that the appellant-plaintiff filed a civil suit for declaration and permanent injunction. According to the plaint, the appellant claimed to be the adopted son of respondent No. 2, Banna Ram. According to the appellant, Banna Ram had adopted him as a son as far back as Samvat 2045 in accordance with the Hindu rites and customs. It

was further alleged that in the village Shahpura the respondent No. 2 and the appellant had some ancestral land which was being used for agricultural purpose. For the last few years, the respondent No. 2 was not mentally well. Therefore, taking advantage of his mental instability, the respondent No. 1, Maliram, got some sale deed executed on 17-10-2003 for an alleged consideration of Rs. 1,20,000/-. However, the respondent No. 1, in fact, never paid the said amount to the respondent No. 2. The appellant further claimed that since the land was ancestral, the respondent No. 2 had no authority to sell off the said land. Since the respondent No. 1 was trying to dispossess the appellant from the said land, the appellant had filed the said suit. Along with the suit, the appellant had also filed an application for temporary injunction under Order 39, Rules 1 and 2 of the Civil Procedure Code (henceforth to be referred to as ‘the Code’, for short). The respondent No. 1 submitted his written statement and denied the factum of adoption of the appellant by the respondent No. 2. Moreover, he claimed that he had bought the land through a registered sale deed and had paid the consideration mentioned in the sale

deed. He, thus, opposed the grant of temporary injunction. After hearing both the parties, the learned Judge, vide Order dated 19-1-2006, dismissed the application for temporary injunction. Hence, this appeal before this court.

Mr. Mahendra Goyal, the learned counsel for the appellant, has narrated the above factual matrix. He has further contended that the appellant had produced a notarized deed of adoption before the trial court to prove the factum of the appellant's adoption by the respondent No. 2. Secondly, although the respondent No. 1 has claimed that he had paid Rs. 1,20,000/- to the respondent No. 2 for the land in question, yet he has not produced any receipt for the same. Hence, his claim is not only doubtful, but also supports the appellant's contention that no consideration was ever paid for the said land. Thirdly, the possession of the land is still with the appellant. In order to prove his possession, the appellant had moved an application for appointment of a commissioner by the court. However, the respondent No. 1 had resisted the said application. In case the respondent No. 1 were in possession of

the land, he would not have opposed the appointment of the commissioner. Therefore, his resistance of the said appointment should be read against him. Fourthly, since the appellant is in possession of the land, he has a strong prima facie case in his favour. Fifthly, in case of dispute over a property at least the status quo should have been maintained. Lastly, the issue whether the appellant was legally adopted or not could not have been decided at the stage of temporary injunction. Such a issue could be decided only after sufficient evidence is produced before the court.

On the other hand, Mr. Virendra Yadav, the learned counsel for the respondent No. 1, has strenuously argued that respondent No. 2 is in collusion with the appellant. Thus, the former has supported the latter. The land was bought through a registered sale deed. The mutation has been opened in favour of the respondent No. 1. Therefore, the respondent No. 1 has a strong prima facie case in his favour. Hence, the learned Judge was legally justified in passing the impugned Order.

This court has heard the learned counsels for the parties and has perused the impugned order.

Dispute over property are a delicate matter for the trial court to handle especially when both the parties claim to be in possession of the land. However, in case the respondent No. 1 were in possession of the land, there is no reason for him to resist the appointment of a commissioner by the learned trial court. Thus, his resistance to the application moved by the appellant should be read against him. Further, in case he were in possession of the land, then he possibly cannot be aggrieved by an order of maintenance of status quo. For, such an order in fact would be in his favour.

Moreover, the appellant claims the land to be ancestral in nature and also claims that the alleged sale deed were fabricated by the respondent No. 1 while taking benefit of the mental illness of the respondent No. 2. The respondent No. 2 has supported the respondent No. 1 on this stand. Thus, the appellant has raised serious issues to be tried. In the case of

Peer Gulam Naseer v Peer Gulam Jelanee (1988 (2) RLR 871) this court had held that in case there are serious issues to be tried, then status quo should be maintained during the trial. Similar view has also been expressed by the Apex Court in the case of Maharwal Khewaji Trust (Regd.) Faridkot v Baldev Dass (AIR 2005 SC 104). Therefore, this court is also of the view that the status quo should be maintained till the decision of the civil suit by the trial court.

In the result this appeal is allowed and the Order dated 19-1-2006 is set aside. The parties are directed to maintain the status quo as on 13th March, 2007 during the period of the trial.

R. S. Chauhan, J.

MRG.